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OBSERVATIONS

ON

INCLOSING

THE

MANOR OF MELBOURNE.

[PRICE ONE SHILLING AND SIXPENCE.]

OBSERVATIONS

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OBSERVATIONS

ON

INCLOSING

THE

MANOR OF MELBOURNE,

IN THE COUNTY OF

DERBY.

WITH SOME REMARKS ON THE

ACT OF PARLIAMENT

OBTAINED FOR THAT PURPOSE;

AND ALSO

ON THE PROCEEDINGS SUBSEQUENT THERETO.

By THOMAS DUGMORE.

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1800.

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MVSEVM
BRITAN
NICVM

PREFACE.

THE following obſervations have their origin from thoſe irreſiſtible and multifarious inferences, impreſs'd on the mind of the obſerver, that he is involuntarily compelled to think that the act of parliament obtained for the purpoſe of incloſing the uninclosed lands within the manor of Melbourne, was not deſigned for the advantage of the proprietors at large that were intereſted therein, and that the deſign was alſo effected, that the purport was to injure, and not to aid, and that the act itſelf in its principles evidently and literally proves it.

And

And although it may ſeem to be out of the common track, to attempt any open diſquiſition on the intention and ſubſequent proceedings of ſuch buſineſs after its concluſion and its being ended, and that a tacit conformity might be more becoming; yet on the ſame principle it ſhould be remembered that although perſons of rank have a juſt title to all the privileges the law beſtows, yet if they claim more and enforce that claim, it is not underſtood that it is unlawful for the meaneſt of mankind to reſiſt them.

It is true mankind owes duties to his neighbour, but it is as true they owe duties to themſelves, and that the latter are prior and paramount to the former, therefore if it can be ſhewn incontrovertibly, that the buſineſs under the direction of the act of parliament as it

now

now ſtands a law, is perverted, whether wilfully or inadvertently, by thoſe that had the executive power; and that right has been violated and infractions made on the proprietors right, if the law intends impartial juſtice to all without diſtinction of rank, it is not to be doubted that redreſs is not attainable; however if intereſt was not immediately in queſtion, impulſive nature is not eaſily ſubdued and reſtrained from ſhewing reſentment, when right ſeems ſo openly and frequently attacked. And that theſe infractions are real and not imaginary, will be my buſineſs in the following pages to elucidate.

OBSER-

OBSERVATIONS, &c.

THAT the reader may have a more perfect and ſuccinct knowledge of the ſubject matter before him, it may not be improper to ſay a word or two on the proceedings of this buſineſs, previous to obtaining authority for an incloſure, as well as to develope and ſhew the mode purſued ſubſequent thereto.

This part of the buſineſs was planned and conducted by a few of the principal proprietors or their curators, and after that notice was given that an incloſure was in contemplation, and a place was alſo named, where perſons intereſted in the intended incloſure might meet to accelerate the intention, and accordingly an attorney that

had been appointed by theſe men, to prepare and draw up the bill and conduct and manage the whole, read over at different times, the whole of the clauſes that were intended to be comprized in the act. But on the firſt intuitive glance, it was ſeen to contain ſuch native evidence of the purpoſe, and ſo deſcriptive of all that might progreſſively follow, that it was conſidered in each conſtituent part, as adverſe to the major number of the proprietors and ſuited only to the purpoſe of thoſe who modeled it.

However, the bill being paſſed into a law, and conſequently put in force, I propoſe to tranſcribe ſuch part of it as will be adverted to, in this ſlight inveſtigation, and alſo that the reader may ſee that my objections have not their riſe entirely, from a fleeting fabricated fancy, and are only the production of a reſtleſs inſatiate mind.

This act of parliament after reciting the preamble, ſets forth that " Whereas the " right honourable Francis Earl of Hunting- " don is lord of the manor of Melbourne, " and as ſuch is intitled to the ſoil, ſtone, " and minerals of and within the ſaid com- " mons, and waſte lands within the ſaid " lordſhip,

" lordſhip, and is alſo ſeiſed and poſſeſſed
" of and intitled to a right of coney or rab-
" bit-warren, in, upon and over a parcel
" of the ſaid common called Melbourne
" common."

" And whereas the right honourable
" Peniſton Lord Viſcount Melbourne, of
" the Kingdom of Ireland, by virtue of a-
" certain act of parliament, made and paſſed
" in the third year of the reign of her late
" majeſty queen Anne, intituled, an act
" for confirmation of an agreement made
" between Thomas, late lord biſhop of Car-
" liſle, and Thomas Coke, Eſq. for veſting
" the Rectory of Melbourne, in the county
" of Derby, in the ſaid Thomas Coke and
" his heirs, upon augmentation of the
" rents to the biſhoprick of Carliſle, and of
" the ſtipend to the vicar of Melbourne, is
" entitled to the rectory aud parſonage im-
" propriate of Melbourne, and is lay im-
" propriator of all the great tithes ariſing
" and renewing within and from all the
" tithable lands and grounds within the
" ſaid pariſh of Melbourne (except the great
" tithes of certain incloſures, to which the
" vicar of Melbourne for the time being is

" entitled by preſcription) ſubject never-
" theleſs to the payment of the yearly rent
" or ſum of ſeventy pounds to the ſaid lord
" biſhop of Carliſle for the time being, and
" alſo ſubject to the payment of the yearly
" rent or ſum of thirty-five pounds to the
" vicar of Melbourne for the time being for
" ever.

" And whereas the reverend John Mid-
" dleton Clerk is vicar of the ſaid pariſh of
" Melbourne, and as ſuch is intitled to all
" the vicarial or ſmall tithes ariſing and re-
" newing within the ſaid pariſh, and to
" ſuch great tithes as the ſaid vicar is in-
" titled unto by preſcription as aforeſaid.

" And whereas the ſaid Francis earl of
" Huntingdon, Piniſton lord viſcount Mel-
" bourne, Hugh Cantrell, gentlemen, and
" divers other perſons, are the proprietors
" of and entitled unto the reſidue of the
" ſaid common and open fields, meadows,
" paſtures, commons, and waſte grounds.

" And whereas the ſaid common and
" open fields, meadows, paſtures, com-
" mons, and waſte grounds, are in their
" preſent ſituation incapable of any con-
" ſiderable improvement, and it would be
" very advantageous to the ſeveral perſons

" intereſted

" intereſted therein, if the ſame were di-
" vided, allotted and incloſed; but as ſuch
" diviſion, allotment, and incloſure, can-
" not be effected without the aid and au-
" thority of parliament."

After the above they pray the interven-tion of the legiſlature for the appointment of two commiſſioners to execute the deſigns of the act, and recite the oath to be taken by them. After that the appointment of two ſurveyors, and the oath to be taken by them: after this a power to ſurvey afterwards recite the clauſe, reſpecting the road, and that is as follows.

" And be it further enacted, that the
" ſaid commiſſioners or their ſucceſſors,
" ſhall, and they are hereby authoriſed and
" required to ſet out, aſcertain, and appoint
" both public and private roads, high-ways,
" and foot-ways, in, over, and through the
" ſaid common and open fields, meadows,
" paſtures, commons, and waſte grounds,
" of ſuch breadths as they in their judg-
" ment ſhall think neceſſary, ſo as ſuch
" public roads ſhall be, and remain forty
" feet wide between the fences, and ſhall
" be well and ſufficiently fenced on both

" ſides by ſuch of the owners and proprie-
" tors of the lands and grounds, and within
" ſuch time (not exceeding two years from
" the time of the execution of the ſaid a-
" ward or inſtrument of the ſaid commiſ-
" ſioners or their ſucceſſors, as the ſaid com-
" miſſioners or their ſucceſſors ſhall direct and
" appoint, and that it ſhall not be lawful
" for any perſon to erect any gate acroſs
" any of the ſaid roads or to plant any
" trees in or near the hedges on the ſides
" of any of the ſaid roads, at a leſs diſtance
" from each other than fifty yards; and
" after the ſaid roads ſhall have been ſet
" out as aforeſaid, the ſaid commiſſioners
" or their ſucceſſors, ſhall and are hereby
" empowered and required, by writing un-
" der their hands, to appoint ſome proper
" perſon to be a ſurveyor of the ſaid roads,
" and ſuch ſurveyor ſhall cauſe the ſame to
" be fenced, and put in good and ſufficient
" repair, and ſhall be allowed ſuch ſalary
" or reward for his trouble therein, as the
" ſaid commiſſioners or their ſucceſſors ſhall,
" by writing under their hands, direct and
" appoint; which ſaid ſalary or reward,
" and alſo the expences (over and above the

" ſtatute

" ſtatute duty) of forming the ſaid roads,
" and of putting the ſame in good and ſuf-
" ficient repair, ſhall be borne and paid by
" the ſeveral owners and proprietors of the
" lands and grounds hereby intended to be
" divided and incloſed, and ſhall be raiſed
" by a rate to be laid on ſuch owners and
" proprietors, according to their reſpective
" rights and intereſts in the ſaid lands and
" grounds, the reſpective proportions there-
" of to be aſcertained by the ſaid commiſ-
" ſioners or their ſucceſſors in and by the
" ſaid award, ſuch rate to be laid and aſ-
" ſeſſed by the ſaid commiſſioners or their
" ſucceſſors, or by any juſtice of the peace
" for the county of Derby, upon applica-
" tion made for that purpoſe by the ſaid
" ſurveyor, and to be collected and received
" by ſuch perſon as the commiſſioners or
" juſtice, by whom ſuch rate ſhall be laid
" and aſſeſſed, ſhall by writing appoint;
" and in caſe any perſon ſhall neglect or re-
" fuſe to pay his or her ſhare of the ſaid rate
" within fourteen days after demand made
" thereof, the ſame ſhall and may be levied
" and recovered by diſtreſs and ſale of the
" goods and chattels of the perſon ſo neg-

" lecting or refuſing, by warrant under the
" hands, or hand and ſeal of the ſaid com-
" miſſioners or their ſucceſſors, or of any
" juſtice of the peace for the ſaid county,
" (which ſaid warrant the ſaid commiſſion-
" ers or their ſucceſſors, or ſuch juſtice, are
" or is hereby empowered and required to
" grant upon proof on oath of ſuch neg-
" lect or refuſal, and of ſuch demand as
" aforeſaid; and the ſaid commiſſioners or
" their ſucceſſors, or ſuch juſtice, are or is
" hereby alſo empowered to adminiſter ſuch
" oath, returning the overplus (if any) to
" the owner of ſuch goods and chattles, af-
" ter deducting the charges of ſuch diſtreſs
" and ſale; and that no perſon or perſons,
" other than the owners or proprietors of
" the ſaid lands and grounds, ſhall be charg-
" ed or chargeable (over and above the ſaid
" ſtatute duty) towards the forming and re-
" pairing the ſaid roads, until the ſame ſhall
" be made fit for the paſſage of travellers
" and carriages, and ſhall have been certi-
" fied ſo to be by the ſaid ſurveyor, by
" writing under his hand, to be delivered
" to the juſtices at ſome quarter ſeſſions of
" the peace to be holden for the county of

" Derby,

" Derby, and ſuch certificate ſhall have been
" allowed and confirmed by them; which
" ſaid certificate ſhall be delivered to the
" ſaid juſtices at their quarter ſeſſions, to
" be holden next after the ſaid roads ſhall
" be formed and put in good and ſufficient
" repair as aforeſaid, and within the ſpace
" of two years next after the execution of
" the ſaid award or inſtrument, unleſs ſuf-
" ficient reaſon be given, to the ſatisfac-
" tion of the ſaid juſtices, that a further
" time is neceſſary for that purpoſe; in
" which caſe the ſaid juſtices may and are
" hereby empowered to allow ſuch further
" time for delivering in the ſaid certificate
" as they ſhall think proper, not exceeding
" one year; and in caſe the ſaid ſurveyor
" ſhall neglect or refuſe to deliver in ſuch
" certificate within the time before limited,
" ſuch ſurveyor ſhall forfeit and pay the
" ſum of five pounds to be recovered in
" like manner as the rate is herein before
" authoriſed to be recovered, and the ſame
" ſhall be applied in aid of the rate ſo to
" be laid as aforeſaid; and that from and
" after ſuch certificate ſhall have been de-
" livered to the ſaid juſtices by the ſaid

" ſurveyor as aforeſaid, and ſhall have been
" by them allowed and confirmed; and the
" ſaid roads ſhall from time to time be ſup-
" ported and kept in repair in the ſame
" manner as the other public roads within
" the ſaid pariſh are by law to be amended
" and kept in repair; and the ſaid commiſ-
" ſioners, or their ſucceſſors ſhall, and they
" are hereby alſo empowered and required
" to ſet out and appoint, and cauſe to be
" made, erected, and compleated, ſuch
" public bridle roads and footways, and
" private roads and ways, and alſo ſuch
" drains, ditches, water-courſes, bridges,
" ſtiles, and other conveniencies in, over,
" and upon the land and grounds hereby
" intended to be divided and incloſed, as
" they ſhall think requiſite, and the ſame
" ſhall be made and erected, and at all times
" hereafter repaired, cleanſed, maintained,
" and kept in repair by ſuch perſons, and
" in ſuch manner as the ſaid commiſſioners
" or their ſucceſſors ſhall direct; and alſo
" that it ſhall and may be lawful to and for
" the ſaid commiſſioners, or their ſucceſ-
" ſors, to divert, ſtop up, alter or change
" any old public or private road or footway,

and

" and alſo to ſcour and ſtraighten any an-
" cient brook and watercourſe over or upon
" the lands and grounds intended to be di-
" vided and incloſed, and that after the
" ſeveral public and private roads and ways
" ſhall have been ſet out and made, altered,
" diverted, and ſtopped up, as herein before
" mentioned, it ſhall not be lawful for any per-
" ſon or perſons whomſoever, either on foot or
" with horſes, cart, or carriages to uſe ſuch
" ancient or other public or private roads
" or ways which ſhall be ſo turned or altered
" in or over the ſaid common or open fields,
" meadows, paſtures, and waſte grounds ſo
" intended to be divided and incloſed, or
" any of them; which ſaid roads ſo to be
" turned, diverted, altered, and ſtopped
" up, ſhall be ſet forth in the ſaid award of
" the ſaid commiſſioners."

In making ſome remarks on the before recited clauſe, it muſt not be expected that a clear and intelligent explanation will be given thereon, as ſome parts thereof ſeem inexplicable and unintelligible, as in the neglect of a proprietor paying his contribution toward the expence of the roads; for after

demand being made of ſuch rate and complaint being made to the commiſſioners or juſtice of ſuch neglect, or refuſal, the commiſſioners or juſtice are required to adminiſter an oath to the accuſer, and to return the overplus if any. But as it is not clearly underſtood what the overplus of an oath is, this part muſt reſt as it is found, and we ſhall proceed to ſomething leſs obſcure: and it appears by this clauſe that the commiſſioners are empowered to ſet out roads over the land to be incloſed, and alſo to ſtop up ancient roads over ſuch lands, on condition of ſetting them forth in their award. That they have ſet out ſome roads over the land to be incloſed is not to be queſtioned, and alſo that they have not ſtopped up any ancient road over ſuch lands is equally certain. But as they have made a boaſt in their award that they have had due regard to the convenience of both public and private roads, it becomes neceſſary to ſay a word or two on their proceedings, in ſetting out ſuch roads, that thoſe things they have done may be contraſted with what they have ſaid; and in order to do this we ſhall begin with the great road that enters the town at the weſt end,

and

and ſhould proceed through the principal part of the town, to the ſouth-eaſt end, and forward along the road called the Woodlane Way. This road called the Woodlane Way, the commiſſioners pretended ſhould be diſcontinued and ſhut up; and that the new road ſhould take a different range, and ſkirt the town and unite with the old way about a mile and a quarter from the town. But this ſtrange propoſition many of the proprietors endeavoured to reſiſt; by urging that the old road was the common highway through the town, and that the chief inhabitants had a fair and equal advantage of its uſe, and that it was much ſhorter in length, more direct, and convenient, and eaſy, than any other that could poſſibly be ſubſtituted in its ſtead; that the inhabitants had a poſitive right to a road that ſo leads through the town, and that they ought not to be deprived of it; that a carriage might be drawn with a leſs number of cattle the old way, than it could be the way the commiſſioners propoſed; that the way the commiſſioners propoſed to ſet out as the new road, a loaded carriage could not be raiſed to the ſummit of a hill (that was in that way) without great difficulty;

difficulty; that a conſiderable part of the old way was kept in repair at lord Melbourne's expence, in conſideration of a compenſation that had been made; that there was already a ſtone bridge on this road, and that if this road was ſtopped up a new ſtone bridge muſt be erected over the brook that muſt be croſſed, and at the proprietors expence; that there were alſo ſeveral foot-ways that entered the town at that end, and that if the highway was ſtopped up, the foot-ways might ſhare the ſame fate.

Theſe deſigns being underſtood by the inhabitants of a neighbouring townſhip, that frequently uſed this road, thought it their right to remonſtrate on the impropriety of the attempt, and therefore came with intent to ſpeak with the commiſſioners on the atrocity of the deſign; and I myſelf amongſt others was requeſted to accompany theſe people to enforce the juſtice and reaſonableneſs of their plea; but we had no ſooner arrived at the houſe where thoſe dictatorial men were placed, but were met by one of the ſurveyors, and told that our perſons were diſcovered and known, as we paſſed by a window in the houſe, and that our buſi-

neſs

neſs was ſuſpected and anticipated, and that an audience with the commiſſioners would not be permitted!!

At one of the commiſſioners meetings previous to that I have laſt adverted to, the right of continuing the road called the Wood-lane Way, was agitated, as it had been before, but to defeat the deſign of thoſe that were moſt ſtrenuous for its continuance, the attorney that accompanied the commiſſioners propoſed that the company there preſent ſhould determine the diſpute in queſtion; but not whether the old road ſhould or not be continued, but whether there ſhould be two roads or but one, that is, one from the ſouth-eaſt, the other from the ſouth-weſt end of the town, and to unite at about a mile and a quarter from the town, and that if it was agreed that there ſhould be but one, the commiſſioners ſhould have the choice of its locality; and accordingly put the queſtion to about ſix or eight perſons there preſent, and ſome of them dependent on lord Melbourne, and therefore (as might be expected) gave their ſuffrage in his favour.

But what the commiſſioners had in contemplation, or whether they did poſitively intend

intend to ſtop up this road, is not our buſineſs to learn, but to learn whether they have done ſo by ſetting it forth ſo in their award.

As the road called the Woodlane Way is of much importance to the inhabitants of Melbourne as well as others, it may be excuſed if a word or two more be ſaid, though it may be deemed an uſeleſs tranſition, and remote to the point in queſtion. The year previous to the petition to parliament for an incloſure, the great road that ſhould lead through the town and continue forward along the Woodlane Way, was thought by ſome perſons to be too narrow and contracted; particularly where it was confined by the church-yard wall, that fences againſt one ſide of the town ſtreet: To redreſs this inconveniency, the church-yard wall was removed back into the yard, and about four feet in width, and about fifty yards in length of the church-yard was added to the ſtreet, As what is thought neceſſary has been ſaid on this road, we ſhall next take notice of the road that leads the contrary way from the town of Melbourne, that is called the Stanton road. This road was very ſtraight and direct, and that it might continue a

public

public highway, and near its ancient courſe, was the deſire of many of the proprietors; but to defeat their wiſh, the commiſſioners pretended that they had obtained a crude eſtimate of the expence that would ariſe by making this road, but ſome of the proprietors intimating that the eſtimate might be too wild and profuſe, was anſwered by one of the commiſſioners, that it ſhould not avail the proprietors to procure any perſon that might engage to compleat the road at a leſs expence, as they were determined to pay ſuch price as they thought adequate to the work that might be done. So that this road was not put in repair at all, but changed from a direct to an indirect road, and from a public highway to that which is not eaſily deſcribed.

It does not appear by any thing contained in this clauſe, that the commiſſioners were at all authorized to diſpoſe of the money raiſed by a rate impoſed on the proprietors for the making of roads.

And in reſpect to the road the commiſſioners have named by the name of Colcorton road; there need not any ſcruple to declare that there is not any ſuch road ſet out,

known

known or uſed, that will gundrate with that deſcribed by them in their award. Although they imply that it is read in lieu of the Woodlane road.

And alſo the road the commiſſioners have ſet out and named by the name of the Hornes road, is ſet out in ſo indirect a form, that it is near twice the length it ought to be through the manor of Melbourne.

Alſo the road leading from the town of Caulk to the town of Stanton, by theſe deviſes, is much longer than it ſhould be; and the road that was direct over Derby hills, ſet out a few years ſince by the commiſſioners that allotted and divided that land, is now nearly annulled, and the land appropriated to private uſe, and perhaps ſold; but had theſe things been done to make the road more ſtraight and direct, not a word would have been ſaid, but the very reverſe appears by the things that are done.

And if we take notice of the road called Ticknall road, we ſhall find that as indirect in its courſe, as it is ridiculouſly deſcribed in the award; for this road is deſcribed to branch out of the Caulk road,

and

and proceed over Melbourne common, to a certain gate called Ticknall gate. But where this gate is, ſeems not to be underſtood; as it is well known to thoſe that are acquainted with the ſituation of Melbourne, that there is not only the intervention of Derby hill, a part of the manor of Caſtle Donnington, but alſo a part of the manor of Repton, that intervenes between Melbourne and Ticknall, but where the gate is we have not the leaſt knowledge.

And if we turn our eyes towards the road they have named by the appellation of the Crow-Cloſe road, this is deſcribed to commence at a certain gate in an ancient cloſe, called the Crow-Cloſe; at the eaſtward ſide thereof, and from thence extending in an eaſtwardly direction to a certain bridge, called the Corr Bridge, and from thence to the Plank Cloſe. What undiſcoverable road this may be that leads from the gate mentioned in the eaſtward ſide of the Crow-Cloſe to the Bridge, is more than we ſhall attempt to account for, or where the Plank-Cloſe is, its locality is not better underſtood.

Alſo

Alſo if we indulge our curioſity in viewing the deſcription they have given of the Stanton footway, we ſhall find that as injudiciouſly ſet forth as thoſe before mentioned, as this road is ſet forth in their award in part in the following words. " And we " alſo aſcertain, ſet out and appoint, one " other public road or footway, commencing at the weſt end of a certain lane herein " before-mentioned, called the Conery Lane, " in the eaſtwardly end of the firſt allotment, herein after ſet out to the ſaid " John Middleton for tithes." Yet it muſt certainly be underſtood and known by the commiſſioners, that the allotment here mentioned as ſet out for tithes, doth not abutt to the weſt end of Conery Lane, but that the land allotted to the quakers, as well as the Cockſhead Lane road intervenes between the weſt end of Conery Lane and the allotment ſet out for tithes.

Alſo the road they have ſet out and diſtinguiſhed by the name of Taylor's road, they have declared to be a private horſe, carriage, and drift road; and where Taylor's road terminates, the road they have named by the appellation of St. Bride's road commenceth,

menceth, and this they have declared to be a public bridle road, but how is this road to be uſed, as a public bridle road, as not any public road whatever leads thereto?

In ſome caſes the commiſſioners have ſet out roads and deſcribed their width, and directed that theſe roads ſhall be kept in repair by the proprietors of lands within the manor, after this they have allotted ſome of theſe roads to the proprietors; but whether the commiſſioners and ſuch proprietors think that part of the act of parliament is void that declares the herbage of the lanes to be veſted in the ſurveyor of the highways, for the uſe of the roads, is more than we pretend to underſtand.

And as it appears by the clauſe reſpecting the roads, that they ſhould be made, erected and compleated, (without diſtinction to particular roads,) and that it ſhould not be lawful to erect any gate thereon, or plant any trees by the ſides of the roads, at a leſs diſtance from each other than fifty yards; it is not ſeen under what legal authority ſo many gates are erected; ſo many plantations planted immediately by the roads ſide, ſo many of the roads contracted

from

from the width they were ſet out by the commiſſioners, and for why the following roads are not fenced out from other land, that the herbage of the lanes may be appropriated to the intended purpoſe; as the Barnſtimber hill road, the Crow-Cloſe road, the Haymeadow road, the Moor-Cloſe road, the Crowder-Lane road, the Taylor's road, St. Bride's road, the Belton road, and for why theſe with the Cockſhead-Lane road, and the Conery-Lane road, and the Forty-foot-Lane road, and others, are not put in repair.

What ideas either the commiſſioners or thoſe that were their principal directors had of the act of parliament, we ſhall not take upon us to ſay, but there ſeems ſuch a diſparity between the mode they have purſued, and the true deſign, that the one ſeems incompatible with the other (if our ideas are not falſe) and this may be ſeen in the following caſe. At the north-weſt end of the town of Melbourne, there is a plot of land belonging to the lord of the manor, this plot of land is known by the name of the Gallows-piece, and a few years ſince was interſected almoſt every way with carriage roads;

roads; but the occupier ſome time ſince, was permitted to incloſe the interior part of this plot of land with a fence, but left a carriage road on the outſide of the new fence on every ſide, but ſtill kept up gates at the extremity of theſe new lanes, to prevent the lanes from becoming common; the figure of the land that the occupier incloſed with a fence, was nearly like unto the numeral letter five, and was encompaſſed by three lanes or roads; there was one road along the top, and one down each ſide, that terminated at a point at the bottom; for this piece of land called the Yellows piece, with the lanes called the Yallows-piece Lanes, the lord delivered in a claim to the commiſſioners as being his own freehold, and this was not ever queſtioned; but that the two ſide lanes might be appropriated to the lord's private uſe, and that the roads might ceaſe, the commiſſioners take upon them to allot unto the lord one of theſe ſide lanes, a plot of his own freehold land, and an ancient incloſure, and to give it ſome colour, baptize the lane by a new name, and direct that the lord ſhall make the fence, and this his tenant did before; but the fence

being

being now changed from a gate to a wall, the two ſide lanes have ſince the incloſure been ſhut up!! but under what authority is not known, for it is not underſtood that the commiſſioners had any power or authority to interfere with lands that were ancient incloſure, (excepting exchanges by the mutual concurrence of each party, intereſted in ſuch lands), much leſs to ſtop up roads, over ſuch ancient incloſures; however, if they had intended to ſtop up the two ſide lanes in the Yellows-piece, by making the lord a complimental gift of a plot of his own old incloſure, there is one eſſential ingredient yet wanting to complete the deſign, as they have not ſet it forth ſo in their award. It rather ſeems that ſome of the proprietors contemn ſuch parts of the act of parliament as requires the commiſſioners to ſet it forth in their award, if they ſtop up a road, otherwiſe there would not be thoſe threats of proſecution, in different parts of the manor, againſt perſons uſing ancient roads; it is true theſe proſecutions it is ſaid will be carried on according to law; but what law is to puniſh a perſon for doing a lawful deed, is not yet known; except

cept the peremptory will of an individual be ſubſtituted inſtead of the preſent law. Before this improvident incloſure there was a public highway through the principal part of the town, called the Woodlane Way. Alſo a public bridle road leading to Caſtle Donnington, alſo a public footway leading from one of theſe towns to the other, called the New Bridgeway; alſo a footway from the town of Melbourne, to a place called the King Mills, known by the name of the Cliff-hill Way, alſo a road from the end of Kingſnewton to Swarkſton, called the Holywell Sink road, alſo a footway from the town of Kingſnewton to the town of Wilſon, alſo various footways that branch out of the road, called the Woodlane Way, at or near the place called the Town-end-Bridge, that leads to Breedon, Wilſon, Staunton, and other places, and as theſe and others were ancient roads before the incloſure, and are not turned, diverted, altered and ſtopped, by the commiſſioners in their award, it is not underſtood by what latent authority the uſe of theſe and other roads are attempted to be prohibited; yet it cannot be a ſurprize while one of the principal and genteeleſt

houſes in the town, has not any road to the front door, and the occupiers are only permitted to proceed a back way to a back door of their houſe!

That the roads might be put in ſufficient repair, a rate was to be laid on the proprietors of the lands to be incloſed, proportionate with their intereſt therein, and by a ſchedule annexed to the award, this rate is ſet forth and aſcertained, but as the quakers were intereſted in theſe lands, it is not underſtood for what ſecret and imperceptible cauſe theſe people were exempt and acquit of this proportionate rate. But this is analogous and approximates with the commiſſioners proceedings in their ſetting out the Stanton road; for though the quakers allotment is ſituated in a direct line where the road ſhould be, and the road is on each ſide their allotment, yet there is not any ſet out over their land!! It is alſo underſtood that the ſum of one thouſand one hundred and forty three pounds has been advanced, for the purpoſe of making the roads, but I think half the ſum judiciouſly applied, would have compleated as much as hath been done, but

but when or who is to account for this money is yet unknown.

Next is the clauſe that requires the commiſſioners to ſet out a plot of land, for the purpoſe of providing the inhabitants of the manor with materials for the reparation of the roads.

" And be it further enacted, that the ſaid " commiſſioners, or their ſucceſſors, ſhall " and may ſet out and allot unto the ſur- " veyor of the highways, within the liber- " ties of Melbourne and Kingſnewton, for " the time being for ever, ſuch part or " parts of the ſaid common and open fields, " meadows, paſtures, commons and waſte " grounds, as they ſhall think fit, not ex- " ceeding in the whole four acres, to be " uſed and enjoyed for ever thereafter by " the ſaid lord of the ſaid manor, and pro- " prietors of eſtates within the ſame, for " the purpoſe of getting ſtone and other " materials for building or rebuilding, and " repairing of public bridges within the ſaid " liberties of Melbourne and Kingſnewton, " and for the reparation of the highways " and private roads which now are or here- " after ſhall be within the ſame, the herbage

 " growing

" growing and renewing in and upon the
" ſaid four acres of land, and in and upon
" the lanes within the liberties of Melbourne
" and Kingſnewton aforeſaid, ſhall be veſted
" in the ſurveyor of the highways for the
" time being, who ſhall annually account
" for the rents and profits thereof, and the
" ſame ſhall go and be applied in aid of the
" highway aſſeſſments, to be granted for
" the uſe of the ſaid liberties reſpectively,
" and if any of the ſurveyors of the ſaid
" highways ſhall, at any time or time here-
" after, neglect or refuſe to account for and
" apply the ſaid rents for the herbage grow-
" ing or renewing from the ſaid four acres
" of land and the lanes aforeſaid, it ſhall
" and may be lawful to and for any of his
" Majeſty's juſtices of the peace in and for
" the ſaid county of Derby, to cauſe the
" ſaid rent, and arrears of rent, and the
" coſts and charges attending the diſtreſs,
" from time to time, to be raiſed and levied
" by diſtreſs and ſale of the goods and chat-
" tels of ſuch ſurveyor ſo neglecting or re-
" fuſing to account for ſuch rents as afore-
" ſaid."

In

In looking over this laſt recited clauſe, and contraſting the liberal meaning with what is done, and intended to be done, it is not ſeen how the ſurveyor can always comply with this injunction, as we ſhall ſee hereafter, that not any perſon were to put any kind of cattle in the lanes for the ſpace of ſeven years, from the ſigning of the award, nor are there the lanes there ought to be, as ſome of the roads are not fenced out, and ſome of thoſe that are fenced, are ſo contracted from the width they were ſet out by the commiſſioners, that the paſturage is but of little worth. And ſuppoſing the ſurveyor to be my lord's tenant, and under the immediate inſpection of a tyrannical curator, the ſurveyor dares not demand that right to be done in every caſe any more than he dares bring ruin on his own head.

Next is the clauſe that directs the commiſſioners in ſetting out a part of the tithes.

" And be it further enacted, that the ſaid " commiſſioners or their ſucceſſors ſhall, " and they are hereby required in the next " place to ſet out and allot unto, and for " the ſaid lord viſcount Melbourne, his

 " heirs

" heirs and aſſigns, as lay impropriator as
" aforeſaid, and to the ſaid John Middle-
" ton and his ſucceſſors, vicars of Mel-
" bourne aforeſaid, in ſeverally according
" to their reſpective eſtates and intereſts
" therein, ſo much and ſuch parts of the
" lands and grounds hereby intended to be
" divided and incloſed, as in the judgment
" of the ſaid commiſſioners or their ſucceſ-
" ſors (quantity, quality and ſituation con-
" ſidered), ſhall be equal in value to the
" following proportions; (that is to ſay)
" to one tenth part of Melbourne common,
" and of the other commons and waſte lands
" within the ſaid liberties of Melbourne
" and Kingſnewton, and of the meadows and
" paſture land, and alſo of all the old in-
" cloſures and homeſteads, ſubject to the
" payment of tithes, and to be exonerated
" therefrom (except that piece or parcel of
" woodland or ground belonging to the
" ſaid earl of Huntingdon, called Melbourne
" coppice), and one ſeventh part of all the
" ſaid ſeveral common fields in the ſaid
" liberties of Melbourne and Kingſnewton,
" and ſo much and ſuch further part of the
" thos reſidue as in the judgment of the

" ſaid

" ſaid commiſſioners or their ſucceſſors,
" ſhall be equal in value to all the tithes
" and intereſt of the ſaid lord viſcount Mel-
" bourne, his heirs and aſſigns, as lay im-
" propriator, and the ſaid John Middleton,
" as vicar, and his ſucceſſors reſpectively
" are or may be entitled to or have in the
" ſaid piece or parcel of woodland or ground
" belonging to the ſaid earl of Hunting-
" don, called Melbourne coppice; which
" ſaid allotment ſhall be in lieu of, and
" as a full compenſation for all tithes, both
" great and ſmall, and all eccleſiaſtical and
" eaſter dues and payments whatſoever, ari-
" ſing, renewing, or happening within the
" ſaid liberties of Melbourne and Kingſnew-
" ton reſpectively, (except mortuaries, ſur-
" plice fees, and moduſſes."

On looking over this laſt clauſe, it might be conjectured that a tenth of the waſtes and of the meadows, and of the paſtures, and of the old incloſures and homeſteads, (the coppice excepted), with a ſeventh of the fields and tithes of the coppice, was intended as a full compenſation for tithes, and that theſe tithes were to be taken from all the tithable lands indiſcriminately, but in

the purſuit of our enquiry we ſhall diſcover by a ſubſequent clauſe, that this act was not to extend to all the land belonging to the lord of the manor, within the manor of Melbourne, and this mode of tithing was to be only partial; but as thoſe that were intereſted in the tithes might think they had ſecured all they could juſtly claim; I ſhall only remark that the vicar had a ſhare of the predial tithes, particularly of thoſe lands that are ſaid to be moſt recently taken from the waſte, as of one whole farm, (one cloſe and two acres of field land excepted) of the Rough cloſe, of the Coppice cloſe, Knight's cloſe, Maſon's cloſe, or Ton's cloſe, and of other lands that it would be uſeleſs to recount over here, he had the tithe wool of the ſheep depaſtured on the commonable land, and the tithe of the lambs; and I think the number of aged ſheep not leſs than twelve hundred, and the lambs four hundred, but theſe might not be decimated with exactneſs. It is not underſtood that the impropriator had any profits as tithes from the commonable land in its incloſed ſtate; however it appears by the award (if rightly remembered) that the contents of

the

the impropriator's tithes are three hundred and ſeventy two acres, one rood and thirty perches of land; and the vicar's ſeventy eight acres, three roods and twenty three perches.

Next follows the clauſe that excluded the commoners from their right in the land called the Lord's ground, and it is alſo preſumed that under ſome ſtrange miſconception of this clauſe, they have hitherto been prevented from being participants of the land called the Care flats.

" And be it further enacted, that the " two plots or parcels of ground belonging " to the ſaid earl of Huntingdon, called " the Lord's ground, in Ramſley field, ex- " cluſive of the cloſe adjoining thereto, " called Grove's cloſe, or Aſhgap cloſe, and " the Care flats adjoining a piece or parcel " of ground belonging to the ſaid earl, call- " ed the Care paſture, ſhall be ſubject to " the deduction of one ſeventh part for " tithe, the ſame as open field land; but " in all other reſpects under this act, ſhall " be deemed and taken as ancient inclo- " ſure."

In caſting my eye over the laſt recited clauſe, it doth not appear to me that any thing therein contained, doth exclude the commoners from their right in the land called the Care flats, neither do I know how far it was juſt and honourable in the proprietor of the land called the Lord's ground, to obtain the authority of parliament to exclude them from their right therein; but as that is done, and the right is irretrievable, we ſhall endeavour to have ſome regard to that we think is retrievable; whether it was intended to bar the commoners of their right in the land called the Care flats, as well as in the Lord's ground, by this clauſe we ſhall not ſay; but think a very few more apt words would have done it, but from the inaptneſs of thoſe that have been uſed, we think it is not done. However it doth not appear that the commiſſioners have at all interfered with the Care flats either by allotting them to the lord of the manor, or amongſt the other proprietors, nor have they ſet out the roads over this land, or cauſed them to be made, (though there is a road over this land not much ſhort of half a mile in length) nor have they rated this land to

the

the making of other roads, nor to the fencing of the vicar's allotments, nor to the expence of obtaining the act, and carrying it into execution. And not only all this, but the lord has seized the whole of the Care flats, (though not allotted unto him by the commissioners), and perhaps has had an allotment for that land or part, that should have been apportioned amongst the commoners as their right!!

Here follows the clause that unfolds the lord of the manor's claim made for his manorial right.

" And be it further enacted, that the said " commissioners, or their successors, shall, " and they are hereby required to set out " and allot unto the said Francis earl of Hun- " tingdon, and his heirs, as lord of the said " manor of Melbourne, so much and such " part and parts of the residue of the lands " and grounds hereby intended to be di- " vided and inclosed, as shall in the judg- " ment of the said commissioners or their " successors, (quantity, quality and situation " considered), be equal to one full eight- " teenth part or share of Melbourne com- " mon, and of all the commons and waste

 " lands,

" lands, by this act intended to be divided
" and incloſed (after the roads in and over
" the ſame are ſet out, and the allotments
" for materials to repair the roads, and the
" deduction for tithes as aforeſaid), for and
" in lieu of and as a full recompence and
" ſatisfaction for his right or claim to the
" ſoil of all or any part of the lands to be
" incloſed, and for his conſent to the in-
" cloſure thereof; and ſhall alſo ſet out
" and allot unto the ſaid Francis earl of
" Huntingdon, and his heirs, ſuch further
" parts of the ſaid lands and grounds by
" this act intended to be divided and in-
" cloſed as by the ſaid commiſſioners or
" their ſucceſſors, ſhall be deemed of the
" full and clear yearly value of forty pounds,
" for and in lieu of his right of coney war-
" ren in and over Melbourne common afore-
" ſaid, and which is accepted by the ſaid
" earl of Huntingdon as an adequate com-
" penſation for the extinguiſhment of his
" coney warren, which the ſaid earl, his
" leſſee or leſſees, hath or have, is or are
" entitled unto, in, over or upon Melbourne
" common, or within the pariſh of Mel-
" bourne aforeſaid; and ſhall ſet out and

" allot

" allot unto, and for the ſaid Francis earl " of Huntingdon, ſuch further part of the " ſaid lands and grounds to be divided and " incloſed as aforeſaid, as they the ſaid " commiſſioners, or their ſucceſſors, ſhall " deem and judge to be of the full and clear " yearly value of twenty pounds, in lieu of " and as a full ſatisfaction for the ſaid earl " of Huntingdon's ſtone quarries, and his " right of getting ſtone and all other mine- " rals upon the commons and waſte lands " by this act intended to be divided and " incloſed."

That the earl of Huntingdon was lord of the manor of Melbourne, is not to be queſtioned, but that it ſhould be pretended that an eighteenth of the waſtes (excepting the roads, the land for materials for roads, and the lands ſet out for tithes) ſhould be as a full compenſation and ſatisfaction for that right, and afterwards require forty pounds yearly value in lands, for his warren on the waſte, and after that twenty pounds yearly value, in land, for his ſtone quarries, is ſuch a diviſibility of the whole into parts, as is not well underſtood; as the two laſt claims appear to be but branches ſhooting from

from one ſtock, the manorial right; but as this is the law, it muſt remain. However I cannot let this ſlide by, without making ſome ſlight remarks thereon; and firſt in reſpect to the warren, it is but little more than forty years ſince it was not known that there was a rabbit on the common, and ſo late as the year 1764, the yearly rent of the warren was ten pounds, but about one year previous to the incloſure bill, the rent of the warren was advanced to thirty, but not more. The practice of letting the ſtone quarries, is of recent date, how far it was right in the lord to grant to the commoners a right to get ſtone, and afterwards to ſell it from them, I ſhall not here ſay, but it appears that the twenty pounds a year for the ſtone, was directed to be alloted to the earl of Huntingdon (without any regard towards of inheritance); and it happened that the earl of Huntingdon died, in the year 1789, and that the incloſure was not compleated until the year 1791, therefore it ſeems poſſible, that this part of the claim might have been queſtioned, but was this the full extenſion

of

of his claim we ſhould be ſilent, but ſo far from this, that it appears almoſt indefinite; if this buſinneſs had been conducted circumſpectly and judiciouſly, and the land that has been ſeized, is not more than the law will imply to be comprized, within the meaning of his claim, under the authority of this act.

The other parts of his claim I ſhall take notice of as they occur in my way, and proceed to tranſcribe another clauſe.

" And be it further enacted, that the ſaid " commiſſioners, or their ſucceſſors ſhall, " and they are hereby authorized and re- " quired, as ſoon as conveniently may be, " after the ſaid map and plan ſhall be laid " before them, to apportion, divide, ſet out " and allot the reſidue and remainder of the " ſaid common and open fields, meadows, " paſtures, commons or waſte grounds, unto " and among all and every the owners and " proprietors of meſſuages, cottages, tofts, " lands, and hereditaments, having a right and " intereſt in ſuch common and open fields, " meadows, paſtures, commons and waſte " grounds reſpectively, in fair and equal " proportions, according to their reſpective

" rights,

" rights, properties and intereſts therein,
" and in making ſuch allotments, the ſaid
" commiſſioners and their ſucceſſors ſhall,
" and they are hereby required to have due
" regard to the ſituation and convenience,
" as well as to the quantity and quality of
" the land to be alloted, and ſhall allot the
" ſhare or ſhares of each proprietor, reſ-
" pectively, as conveniently as may be, diſ-
" tinguiſhing the freehold from the copy-
" hold land, yet ſo as that the Town end, or
" Milbourne end field, Dovemore field, and
" the common called Dovemore, adjoining
" to the laſt-mentioned field, be alloted
" unto and for the ſaid lord viſcount Mel-
" bourne, and which the ſaid commiſſion-
" ers and their ſucceſſors are hereby direct-
" ed and required to allot to the ſaid lord
" viſcount Melbourne accordingly."

From this laſt recited clauſe, it is preſumed, that all commonable lands, (excluſive of thoſe that had been previouſly ſecured), was to be divided, alloted and apportioned amongſt the proprietors in proportion to their right. With how much exactneſs this has been done, will be better determined when we ſpeak more fully reſpecting

pecting the land called the Care flats, and the land that is covered with the water, that is called Melbourne pool, and the land that is implied to be covered with water, and called Furnace pool, we ſhall therefore leave all further remarks on this until we ſpeak to that purpoſe, and now proceed to tranſcribe another clauſe.

" And be it further enacted, That from " and immediately after the allotments to " be made in purſuance of this act, ſhall " by order of the ſaid commiſſioners be " marked or ſtaked out, all the ſeveral " ſhares or allotments to be ſet out as " aforeſaid, ſhall be in lieu of full ſatisfac- " tion and compenſation for all rights of " common, which the ſaid proprietors or " any of them ſhould or might have had or " been entitled to in, over, and upon the " ſaid common and open fields, meadows, " paſtures, commons, and waſte grounds, " or any part thereof, and from that time " all tithes within the ſaid liberties, and all " right of common in or upon the ſaid com- " mon and open fields, meadows, paſtures, " commons, and waſte grounds, or upon " any part thereof, ſhall ceaſe and be for-

" ever

" ever barred, abolished, and extinguish-
" ed."

It seems by the last recited clause, that after the allotments were made and set out, that each proprietor's right were contracted and contained within such allotments, that were made in lieu of the right they might have in the land to be inclosed; but this must certainly be understood on the presumption, that the other clauses have been observed, and strictly attended to, and that the whole of the land to be inclosed, under the authority of this act, was carved out in these allotments (excepting such lands as were otherwise secured, as the roads, the allotments for the reparation of roads, the allotments for tithes, an eighteenth of all the wastes, to the lord of the manor, as his right to the soil, forty pounds yearly value for his warren, on the waste, twenty pounds yearly value for his stone quarries, on the waste, his open field land in the Ramsley field called the Lord's Ground to be deemed old inclosure, with the land called Ramsley Wood, secured from tithes) but that all other lands intended to be inclosed by this act were comprised within these allotments;

but

but we truſt, that we are yet capable and ready to ſhew that a conſiderable quantity of land over which the commoners right extended, is neither apportioned, allotted, or divided by the commiſſioners amongſt the proprietors, or contained in the allotments made, and that ſuch lands are ſeiſed, and held in total excluſion, of thoſe that had and (it is preſumed) has a right therein; and this we ſhall endeavour to prove hereafter, and now proceed to tranſcribe another clauſe.

" Provided always, and be it further e-
" nacted and declared, That nothing in this
" act contained ſhall extend, or be con-
" ſtrued or deemed to extend to Ramſley
" Wood, but that the ſame ſhall remain,
" and all rights, claims, and intereſts to,
" in, or out of the ſame, ſhall continue in
" all reſpects, and to all intents and pur-
" poſes as if this preſent act had not been
" made, except only as to any right of com-
" mon in and over the lands and grounds
" to be incloſed, that may be belonging
" thereto."

As thoſe whoſe intereſt this laſt recited clauſe affected might be either ſoothed into compliance

compliance therewith, or enervated from repelling its effect; we ſhall only obſerve that where diſadvantage was at hand (as the tithes) this clauſe intervened; but where advantage might occur (as by a claim on the commonable land) that was as cautiouſly protected.

Next follows the clauſe that ſecures the lord of the manor's right of fiſhery in the manor of Melbourne.

" Provided alſo, and be it further enact-
" ed, That nothing in this act ſhall leſſen
" or prejudice the right or intereſt of the
" ſaid Earl of Huntingdon, his heirs and
" aſſigns, leſſee, or leſſees, to or in the pool
" called Furnace Pool; and the ſtreams of
" water leading to the ſame; or to or in the
" pool called Melbourne Pool, according to
" its preſent form and dimenſion, and the
" ſtreams of water leading to the ſame, and
" the dams, weirs, and water-courſes thereto
" reſpectively belonging, or leſſen or pre-
" judice the right of fiſhery of the ſaid Earl
" of Huntingdon in the ſaid pools, or in
" the river Trent, and the caves thereto be-
" longing, within the pariſh or lordſhip of
" Melbourne aforeſaid, or in the brook call-

" ed

" ed Carebrook; but that the ſame pools,
" ſtreams, dams, weirs, and watercourſes,
" and reſpective fiſheries, together with the
" uſual and accuſtomed right of landing
" nets upon the banks of the ſaid pools, ri-
" ver, caves, and brook, ſhall be occupied
" and enjoyed by the ſaid Earl of Hunting-
" don, his heirs and aſſigns, leſſee and leſ-
" ſees, in as full, ample, and beneficial a
" manner, to all intents and purpoſes, as if
" this act had not been made."

In making ſome obſervations on the preceding clauſe, it muſt not be expected that we ſhall be able to develope its meaning, with that profundity and inventive ſkill that was manifeſt in thoſe that penned it; but it will be fully ſufficient for us, if we can glean a few remarks from it that we conceive will be conſonant with that the law will imply, from ſuch a clauſe, couched in ſuch terms as this is; for what right or intereſt the Earl of Huntingdon, his heirs and aſſigns, leſſee or leſſees had in this ideal Furnace Pool, is not well underſtood, for it is here openly declared in the face of mankind, that this Furnace Pool was at the time of obtaining this act of parliament, and ever ſince

that

that time, a nonentity; and had not any locality, nor occupied or filled any ſpace whatever, within the manor of Melbourne; ſo that it is not conceived what imaginary right can be ſecured either to the lord or his tenants thereby. And in reſpect to Melbourne Pool and other waters within the manor (excepting perſons private property) it is not known that his right of fiſhery was at all controverted, or that it was lawful to divert the ſtream of water, that leads to his corn-mill, but the weir and the gates in the mound or head of the pool, are on another perſon's property, and not on the lord of the manor's land; and how far it is juſt and right for the lord to have the privilege of coming or entering on other perſons lands that are ſituate by the water-ſide whenever he pleaſes or thinks fit, and to ſend and order any he thinks fit at all times of the year, in prejudice of the occupier, whether the land be covered with corn or graſs, is what requires a very ſhort determination; or whether it is juſt and right in the lord that has covenanted with the commoners that he would not come upon their land on any occaſion whatever, excepting for waifs and

eſtray,

eſtray, and in caſe of default of the payment of chisfront and acknowledgment of his court, yet hereby ſeems inclined to defeat his own act and deed. However as there is more to be ſaid on this clauſe when we ſpeak on the commiſſioners proceedings thereon; we ſhall omit the reſt until that time, and now proceed to tranſcribe another clauſe.

" And be it further enacted, that the " ſaid commiſſioners, or their ſucceſſors, " ſhall, and they are hereby required from " time to time to enter in a book to be kept " for that purpoſe, a particular account of " all monies received of and from the ſeve- " ral owners and proprietors of the ſaid " common and open fields, meadows, paſ- " tures, commons and waſte grounds, ſo " intended to be divided and incloſed, and " alſo all the charges, expences and diſ- " burſements which ſhall accrue or be made " by them, or any of them, by virtue of " this act, and carrying the ſame into exe- " cution, which book with the proper " vouchers, they ſhall produce to the ſaid " proprietors, or any two of them when re- " quired, and the ſaid book ſhall be ſigned " by the ſaid commiſſioners or their ſuc-

" ceſſors,

" ceſſors, and be depoſited and kept with " the ſaid award in the box or cheſt in the " pariſh church of Melbourne aforeſaid."

To this laſt clauſe it is only neceſſary to obſerve, that the demands made by the commiſſioners, and alſo the diſcharges of thoſe demands were by two payments, but the firſt of thoſe was diſcovered to be diſproportionate with each proprietor's intereſt, and of this they were accuſed, and they acknowledged the miſtake; but although the act of parliament was a ſufficient authority for them to enforce the payment of their demand; yet it ſeems inſufficient as yet to enforce them to account for ſuch demand, although it requires the one as well as the other, yet not any account has hitherto appeared for inſpection; nor doth it ſeem to be ever intended, if that part of their duty can be at all eluded.

Having now ſelected and tranſcribed ſuch clauſes from the act of parliament as were conceived neceſſary for the reader to recur to, in ſcrutinizing what might be here advanced, we ſhall endeavour next to ſhew the mode the commiſſioners purſued in the diſtribution of the lands they were required

to

to allot and divide. But as it may ſeem ſtrange, that ſuch a bill could ever meet the concurrence of the proprietors, that had great rights and privileges from the commonable lands in their native and uninclоſed ſtate, and as the bill in its principles was calculated to injure thoſe rights, it was required of thoſe men that were ſo ready to carve out the land, before they had authority, what compenſation was intended to be made, that would countervail with thoſe rights the bill was meant to deſtroy. To this it was anſwered, that it was intended to allot one acre of land (upon an average), to every meſſuage that was entitled to a right of common, and the remainder to be apportioned amongſt the proprietors of land adequate with their intereſt therein. But this propoſition was held in contempt. Afterwards two acres of land was propoſed to be alloted to each meſſuage; but this was alſo rejected. However from the aſſiduous and intenſe diligence of the vicar and others, that went from houſe to houſe to obtain the ſuffrage of each proprietor, and encountered them ſingly when unprepared with either a competent knowledge of the bill, or ar-

gument to combat the art; the acquieſcence of many of the proprietors were obtained without making any ſtipulative compact whatever, and the bill was paſſed into a law as it now ſtands.

The manor being ſurveyed, the two commiſſioners met (one by the appointment of the lord of the manor, the other by the appointment of Lord Melbourne), and ſet out ſuch roads, (we preſume) as they were directed to ſet out; and alſo gave notice to the proprietors to deliver in unto them their claims, and this being done, and the claims being expoſed, it appeared that ſome of theſe were made for a pretended right only, that in fact did not exiſt, as ſome had ſplit their meſſuages, others for meſſuages that had not any viſibility, others for meſſuages that had been recently built; others for meſſuages, cottages and ſtables, that it could not be conceived had ever enjoyed any right of common.

Such claims as theſe before enumerated, were objected by the other proprietors, on this general principle, that there was not any evidence to prove that any right was ever annexed thereto, or that any perſon in

right

right of ſuch houſes or ſtable, had enjoyed a right of common, and therefore ought not to be allowed a compenſation for a pretended right, which in fact did not ever exiſt.

On the claims and the objections againſt them, the commiſſioners thought fit to take the opinion of counſel; (but to what purpoſe was not ever known) and I conceived that the ſequel of the opinion was that twenty years was conſidered a ſufficient length of time to determine a right of common.

How cloſely they attended to this opinion, will be better underſtood by ſtating a caſe of each deſcription, with the commiſſioners determination thereon; and the firſt we ſhall recur to, was for a claim made in right of a houſe that was conſidered by the objectors as only an apartment, or part of the original houſe. The occupier thereof being examined by the commiſſioners, ſaid that he had been a reſident therein for more than thirty years, that during that time he had not any commonable cattle, that he was not nor the houſe aſſeſſed to any tax or rate, that the other part or other houſe was

only aſſeſſed, and that occupier paid all rates charged thereon, excepting a ſmall rent to his landlord; however the commiſſioners allowed this claim to be good and valid!

Of a different deſcription to the laſt was Trafford's claim; that was made in the pretended right of a houſe that had been built about ſeventeen years previous to the act being paſſed for an incloſure. Upon inveſtigating this claim, it appeared that about eighteen years prior to the claim, the claimant was ſeiſed of a plot of land in the manor of Caſtle Donnington; this plot of land he exchanged with Lord Melbourne for a ſmall plot of land, part of a croft or cloſe, ſituate in the manor of Melbourne; that the fence that ſeparated that part of the croft that was become the claimant's from that part that yet remained Lord Melbourne's, had interſected or cut through the foundation of an ancient ruin, where a houſe had formerly ſtood, but not any part viſible above the ſurface of the earth, for more than ſixty years. That the claimant had erected two houſes on this plot of land; that an occupier of one of theſe houſes had

put

put his horſe on commonable land; and that the commoners had ordered his horſe to be impounded as a treſpaſſer. That the tenant went to his landlord, and told what had happened; that the claimant replied, (from his own ſaying before the commiſſioners), that if the tenant would be at half the expence, they would replevy, and try the right, that the tenant rejecting ſuch a propoſition, the claimant left him to redeem his horſe as he could, and acknowledged himſelf a treſpaſſer.

To the above it was replied by the commoners, that the pretended right in the old ruins was a mere device, as the houſe had been down near ſeventy years; and Lord Melbourne, that was originally the proprietor of the land and old ruins, had not ever pretended to any right therein, that the new houſe had not been built more than eighteen years, and that the claimant had an opportunity of trying his right when his tenant's horſe was impounded for being at large on commonable land, (but that he had refuſed to do), and therefore could not pretend that he had ever enjoyed a right. However, all efforts to defeat the claim was ineffec-

tual, and it was allowed, though there is much more to be ſaid if it were neceſſary, but not any thing in favour of thoſe that favoured the claim.

Somewhat ſimilar to the laſt recited claim was Dolman's. This was made in the pretended right of a houſe, that was merely conjectural; as not any perſon living could remember any ſuch houſe, though there was evidence to prove that there was a barn, and that about ſixty or ſeventy years ſince, it was remembered, that there was at that time a hole in the barn wall, where a window might have been; and that there was a board on the roof that had the reſemblance of the remains of a chimney. And the claimant further obſerved, that about ſeven years prior to the claim being made, he had built ſeveral new houſes at a diſtance from the barn, and that a tenant of one of the new houſes had put a few ſheep on the common, ſome months, a part of one year only. To this it was replied, that there was not any evidence to prove that the barn had ever been a houſe, much leſs to prove that any perſon had ever enjoyed a right of common for ſuch ſuppoſed houſe; that the new houſes built at a diſtance from

the

the place where it was ſaid the old one ſtood, and the tenant of the new houſe putting a few ſheep on the common a few months, could neither revive the old right (if ſuch right ever exiſted) or create a new one.

But all objections were vain and fruitleſs, for the commiſſioners allowed this claim alſo, and all others made in right of houſes that had been built ſixty years, whether the occupier of ſuch houſe had ever enjoyed a right of common or not. And on that principle a ſtable was admitted in competition with the firſt manſion, under no other pretenſions of right, but becauſe two female paupers had been permitted (by the tenant) to reſide in a corner of this ſtable for ſome time, the one in ſucceſſion to the other. The commoners diſcovering that the commiſſioners did not anywiſe conſider the enjoyment of right requiſite to conſtitute a claim made in right of a houſe that had been built ſixty years, thought it requiſite to remonſtrate with them, in the following manner. That about ſixty-five years prior to the act for an incloſure, the meadows (belonging to the manor) that contain ſeveral hundred acres of land, that are adjoining to the corn fields, were not fenced or ſeparated from

the field; and that as ſoon as the graſs there growing was cut down and the hay made and carried away, the commoners immediately put their cattle on that land, but if there was corn growing in the field, that was contiguous thereto, perſons were appointed to keep the cattle from the corn until that was cut and carried away alſo; but after that the cattle went at large in the meadows and field until Candlemas the enſuing ſpring. That the commoners were ready to prove theſe unqueſtionable facts by the teſtimony of living witneſs if required; and as they the commiſſioners were determined to allot to each claimant a compenſation for his claim for every houſe that had been built more than ſixty years, and alſo for ſome lands though there did appear a ſhadow of right, and this admiſſion the pretended preſumption that they might have enjoyed a right; but in reſpect to the enjoyment in the marſh and meadows, that was a truth irreſiſtible, and therefore muſt be as valid as an ill grounded preſumptive right, that only exiſted in the ſelfiſh deſire of the claimant, and therefore if one was admitted the other ought not to be rejected. But all this paſſed by ſeemingly unregarded.

After

After the above ſome of the commoners attacked the commiſſioners in the following manner: That there were a number of houſes that had been built, ſome twenty, ſome thirty, others forty years; and the occupiers of ſome of theſe houſes had enjoyed a right of common in right of thoſe houſes, for the length of time the houſes had been built; that they had taken the opinion of an able barriſter at law for their directions, and that his opinion was congenial to their deſign, and ready for their inſpection; and that they the proprietors intended to claim a compenſation in right of ſuch houſes: but the attorney that accompanied the commiſſioners and was by the appointment of the two noble lords ridiculouſly equivocated, on the conception the counſel could have on the caſe, before him, on which his opinion was founded. But to end the diſpute the commiſſioners agreed that their attorney ſhould prepare a new caſe, and lay it before three counſel that had been conſulted on other queſtions, theſe were James Mansfield, Eſq. Allan Chambre, Eſq. and John Holladay, Eſq.

And when this caſe was returned, it appeared that the three counſel were unanimous

in opinion that twenty years enjoyment was a ſufficient length of time to warrant a right, but that there was not any doubt in thirty, except it could be ſhewn that the land on which the houſe was built was taken from the common, or that the enjoyment was in right of ſome other property than that for which it was claimed, with ſome other ſlight remarks inapplicable to the commoners caſe. Upon this caſe the commiſſioners gave notice to the claimants to deliver in unto them their claims. But what was the reſult? only that which created the moſt indignant reſentment; for the principle and intereſt that operated prior to this opinion ſtill preſided, for although there were more than forty of theſe claims, there was not one allowed by the commiſſioners!!

If the commiſſioners had made this deciſion entirely upon their own opinion, this might have been diſpenſed with; as a defect of their knowledge might have been the efficient cauſe of their error: but their rejecting the firſt opinion under the deluſive art and pretence, that the counſel had not a clear idea of the queſtion before him, and then the attorney that accompanied them drawing a new caſe, and the three counſel ratifying the firſt opi-

nion,

nion, and after all this parade to obtain a true ſenſe of the right in queſtion, to reject and contemn the whole, is ſuch an inſult as cannot be eraſed from the mind.

We ſhall not pretend to trouble the reader with a long detail of all the objectionable claims, but content ourſelves with relating one other that was made by the lord of the manor for twenty-four houſes on the waſte, with the land enjoyed therewith, and alſo for a right of common for each houſe, and to confirm this claim his curator ſays, that the occupiers of theſe houſes have paid a ſmall annual rent to the lord: and to ſhew that theſe houſes were ancient houſes ſays, that the eſtate had been mortgaged ſome time ſince, and that one of theſe houſes was mentioned in the mortgage deed.

To this unexpected claim the commoners reply, that theſe ſmall incloſures on which theſe houſes were built were the borders of the common and the corners of other commonable land; that when the commoners perambulated their boundaries they came on theſe lands and demanded a ſum of money of each occupier, as an acknowledgment, that the lands ſo incloſed, were waſte and a part of

thoſe lands over which their right extended; and that theſe demands were made in the preſence of the lord's curator, that ſometimes accompanied them on that occaſion; that theſe encroachments were not charged to parochial rates, that only a few of them had been recently rated to the window tax, that not one of theſe occupiers had been permitted to depaſture cattle on the ſlades, mears, and balks, in the corn fields, while the corn was growing, that was the moſt advantageous paſturage the commoners enjoyed, and that all of theſe had not put cattle on the common, or kept commonable cattle at all, and that ſome of thoſe that had put cattle on the common, their cattle had been impounded for the treſpaſs, and that theſe encroachments were many of them recently extended, and therefore could not be wholly the excluſive right of the lord; neither did it appear that all theſe were ancient houſes, if there were but one to be found when it were ſaid the eſtate was mortgaged, as that time was not very remote or diſtant from the preſent.

As the laſt mentioned ſeemed an unprecedented claim it was thought proper to adviſe with the learned in the law for the commiſſioners

ſioners proceedings; and accordingly caſes were drawn that contained all that was judged requiſite, for and againſt the claim in queſtion, and laid before the three counſel before mentioned; but their opinions being unfavourable to the claim, the lord's curator privately prepared a new caſe, for one of theſe gentlemen; and by varying it in its principles and caſting a different ſhade over it, induced him to retract his firſt opinion: but this caſe and opinion being produced it was thought inadmiſſible, and it was therefore determined to have the three counſel together, that they might reconſider and deliberate on the queſtion that had been laid before them, and either ratify their former opinions, or finally recede from them, and accordingly this was alſo done, but their final determination was kept a ſecret from the general part of the commoners, for though I requeſted to ſee this concluſive opinion, I was neither permitted to ſee it, or hear it read; but for what cauſe an open expoſure of the determination of the counſel was forbid to any of the commoners, that were intereſted in the event, and that muſt bear a proportionate part of the expence that had occurred thereby, is more than we

ſhall

ſhall attempt to account for; and therefore content ourſelves with only ſaying that it reciprocates with the reſt of the buſineſs, conducted under the authority of this act; and both claim and opinion muſt remain in obſcurity.

Having given a ſlight trait of the commiſſioners proceeding, in their carving out ſome of the lands amongſt the proprietors, it is intended next to ſay a word or two reſpecting their award, and thoſe lands that are not ſo carved out amongſt the proprietors by the commiſſioners. And it is thought that upon a ſtrict diſquiſition, that this pretended ſolemn, though voluminous deed, that contains three ſcore large extenſive ſkins of parchment (though one half of that number of ſkins would have contained all that was neceſſary to be ſaid) will be found as cenſurable as incomplete, and injudicious as any other part of the buſineſs we have had before us. When this their award was executed is not publicly known, but it evidenceth for itſelf, that it was ſigned the ſeventeenth day of February 1791, and it is ſaid was three years before it arrived at Melbourne, and ſoon after it was underſtood that it was come, application was made

made to the parish officers (that had it in their care) for a view or perusal thereof; but desultory and indeterminate answers were only received; but after repeated applications it was said that I might attend a vestry meeting, and this being done I was there told that I might be permitted to see such parts of the award that immediately respected my own allotment, and if that was insufficient I might pursue such steps as I thought necessary, as it was expected I meant to find fault with it, if it was fully exposed, and therefore a timely care should prevent it. But how such an insult would operate on the mind that was received from the men that had always been studious to violate the commoners right, and here in open defiance of the act of parliament, that requires the award to be deposited at Melbourne for the inspection and perusal of all persons interested in the inclosure, is not requisite here to say. However before any legal step could be pursued against these men the award was exposed for inspection. But to enter into a minute detail of this award, would be too tedious and tiresome, and therefore we shall content ourselves with only selecting some few, from the many blunders

and

unintelligible parts with which it abounds, and ſeems ſo redundant. And firſt in reſpect to the roads, it has been ſaid before that the commiſſioners have made a boaſt by this their award, that they have had "due regard to the conveniency of both public and private horſe, carriage, and drift roads." But this we ſhall conſider as the flouriſh of a pen only, as the roads themſelves will ſufficiently evidence the contrary, and entirely extinguiſh this vain flaſh; but as they were empowered to divert, ſtop up, alter, or change any ancient road, over the lands they were to allot and divide, ſetting it ſo forth in their award if ſo done, it is of the utmoſt importance, that this their award is indubitable and clear evidence that not any ſuch thing is done, or that not any ancient road, over ſuch land, is turned, diverted, altered, or ſtopped up, by them thereby. And it now ſeems that all thoſe threats of proſecution that were to be commenced againſt thoſe that would daringly uſe forbidden ancient roads, is rather an infraction on the law, than the grounds of a proſecution.

Having ſaid as much as is thought requiſite on the ancient roads, that were ſuppoſed to be ſtopped up by the commiſſioners, we

ſhall

ſhall next advert to ſome of thoſe they pretend by their award to have ſet out, and firſt with that road that has the appellation of Colcorton road, this they ſet forth and deſcribe in part in the following words: "And we do "alſo ſet out and appoint one other public "horſe, carriage, and drift road, of the width "of forty feet between the mound and fences "or ditches as now ſtaked out and marked in "the ſaid plan, branching out of the ſaid laſt "mentioned road called Caulk road, oppoſite "to an ancient ſtone quarry called Lambeth "quarry." To this deſcription of the road called Colcorton road, it is only neceſſary to ſay, that the road ſet out, known, and uſed, doth not by any means correſpond with this deſcription; but whether there muſt be a new road made, according to the deſcription, or whether we are obliged to uſe ſuch road as may be found, though differently ſituated to the deſcription in the award, and conſider the award as a mere nullity void of effect, and ſo imbecile in its conſtruction as to be not any wiſe binding, is not yet aſcertained; but the one of the two ſhould be adapted. To trouble the reader with a long detail of every cenſurable caſe reſpecting the roads the commiſſioners

ſioners mention in their award would be too tireſome, and but little information would accrue, but to thoſe that are acquainted with ſuch roads, therefore we ſhall next take notice of ſome of the allotments ſet out by them, and the firſt we ſhall remark is Dolman's ſecond allotment, and the deſcription of this allotment in their award is as follows. "And "we do alſo allot, ſet out, and appoint unto "and for the ſaid Joſeph Dolman one other "piece, plot, or parcel of land ſpecified and "diſtinguiſhed in the ſaid plan, as his ſecond "allotment hereby made to him the ſaid Jo-"ſeph Dolman, containing by ſurvey eight "acres and twenty-nine perches, or thereа-"bouts, and ſituate, lying, and being on the "ſaid common called Melbourne common, "bounded eaſtwardly, by the ſecond allot-"ment herein before made to the ſurveyor "of the highways within the ſaid liberties "of Melbourne and Kingſnewton, for the "purpoſe of getting ſtone and gravel, and "ſpecified and diſtinguiſhed as ſuch in the "ſaid plan, and an ancient incloſure in the "ſaid liberties of Melbourne and Kingſnew-"ton, or one of them, belonging to the ſaid "Lord Viſcount Melbourne, and called or

"known

" known by the name of the Rough Cloſe " weſtwardly, by the ſecond allotment herein " after made to the ſaid John Ward, and " ſpecified and diſtinguiſhed as ſuch in the " ſaid plan and the ſixth allotment herein " before made to the ſaid Hugh Cantrell, and " ſpecified and diſtinguiſhed as ſuch in the " ſaid plan northwardly, by the allotment " herein after made to the ſaid Sarah Tay- " lor, and ſpecified and diſtinguiſhed as ſuch " in the ſaid plan, and the ſecond allotment " herein before made, for getting ſtone and " gravel and ſouthwardly, by the ſaid pri- " vate horſe, carriage and drift road herein " before mentioned, called the Conery-lane " road, the ſaid public horſe, carriage and " drift road herein before mentioned, called " Ticknall road, and the ſaid ſecond allot- " ment herein after made to the ſaid John " Ward." To this laſt deſcribed allotment it will only be obſerved, that regardleſs of all thoſe pleonaſms and circumlocutions with which it abounds, that it is not poſſible that a plot of land of that dimenſion, and a part of Melbourne common ſhould be limited and bound by ſuch other lands and roads, as they pretend are circumjacent thereto.

However

However inconſiſtent the deſcription of the laſt noticed allotment might be, yet it is preſumed the following is not more rational, for if words are marks and characters of ideas that are aptly expreſſive of their different natures and properties, that they may be rendered intelligible to others, we ſhall be much perplexed to diſcover thereby, what is to be underſtood by the following pretended allotment the commiſſioners have made, that is deſcribed in part in the following words. "And we do alſo ſet out, allot, divide and "apportion unto and for the ſaid lord viſ- "count Melbourne, by and with the conſent "and approbation of the ſaid Francis lord "Rawdon, the owner or proprietor intereſted "therein, teſtified by the ſigning and ſealing "this award, all that lake or pool of water "called or known by the name of Furnace "pool."

The commiſſioners alſo ſet forth in their award, that with the conſent of lord Rawdon as aforeſaid, they have (in exchange) alſo allotted unto lord viſcount Melbourne all that great lake or pool of water called or known by the name of Melbourne pool.

It

It has been ſaid, when ſpeaking of the clauſe reſpecting the lord's fiſhery, that there was not any ſuch lake or pool of water in the lordſhip as the Furnace pool, at the time of paſſing this act, nor had there been for ſeveral years prior thereto, and if ſo, it is needleſs to add, that the Furnace pool is a mere nihility. It is certain there has been ſuch a pool of water on the common as Furnace pool, and that there is ſuch a pool of water as Melbourne pool, but what can be ſuppoſed to be ſecured by the lord of the manor claiming Melbourne pool, excepting his fiſhery, is not underſtood; much leſs can we conceive what were intended by claiming Furnace pool, that had not any exiſtence in nature, or what the commiſſioners could mean by pretending to have allotted, ſet out, and apportioned, all that lake or pool of water, that they knew from their own intellectual knowledge was not viſible to the human eye. However, if the land that might be preſumed to be covered with water, had been the excluſive right of the lord of the manor, it was certainly very needleſs to make a claim in ſuch manner of his right of fiſhery therein. But it concerns us leſs to ſearch into

theſe

theſe abſtruſe deſigns, than it does to diſcover that thoſe lands that might be ſuppoſed to be covered with water, are neither ſet out, alloted or divided, or apportioned amongſt the proprietors at all, nor were they claimed by the lord, and therefore it is truſted theſe lands are neither the one lord's nor yet the other's. But by what ſuppoſed right, theſe lands that are implied to be covered with water, and diſtinguiſhed by the appellation of Melbourne pool, and Furnace pool, with the open field lands called the Care flats, are ſeized by either, or both of the lords, in total excluſion of all other proprietors that had intereſt therein, is what we are in ſearch of, for as the commoners had a right in them prior to the incloſure, it is not underſtood how (if at all), that right is now taken away, and ſolely veſted in the lords. Theſe lands, by the ſurvey, contain between ſeventy and eighty acres; but ſhould our opponents pretend that the other proprietors have lands alloted unto them as a full compenſation for all their rights, the reply is ready, for on the ſame principle the two lords have had theirs in full, if the award is any evidence, extraneous to the lands in queſtion. Should it be

ſuggeſted,

ſuggeſted, that after the allotments were made to each proprietor, that all rights of common ſhould ceaſe; to that it would be ſaid, that this was on the preſumption, that all the lands to be incloſed had been carved out amongſt the proprietors, and if each proprietor's right were circumſcribed and limited within theſe allotments ſo made, why have either or both the lords exceeded theſe bounds by the ſeizure of thoſe lands? It is far from our deſign to queſtion either of the lords rights if they appeared to be juſt, and ſuch as did not immediately militate too ſeverely on our own, for if this act of parliament that was modelled by them, or their ſervants, had been made the rule and ſtrictly adhered to, theſe complaints would not have had exiſtence; for although the lord of the manor had ſecured an eighteenth of all the waſte lands for his manorial right, forty pounds annual value for his warren on the waſte, twenty pounds annual value for his ſtone quarry on the waſte, his open field lands called the Lord's Ground, ſecured from the commoners right therein, and from being rated towards the expence of making the roads, and from the expence of obtaining this act, and its intended purpoſes; and from a proportionate ſhare towards fencing the

vicar's

vicar's allotments. His claim for twenty four houſes on the waſte, with the right of common thereto, according to the determination of the commiſſioners; his fiſhery ſecured, his claim in right of that part of the land called the Lord's Ground, that ſhould have been carved out amongſt the commoners; the Town-end-field, the Dovemoor field, and Dovemore common, ſecured to lord Melbourne, with all other rights that were annexed to their eſtates in the lordſhip, yet to all this we ſhould have been ſilent although reluctant.

But adding to what has been before enumerated, between ſeventy and eighty acres of land, and perhaps a compenſation as a right of common for ſuch land, with various other plots of land that are not here noticed, that are not alloted unto them, and not only the land in queſtion, but the rates that ſhould have been laid on theſe lands, have been laid on other property, as the rate towards the expence of the road, the expence of obtaining the act and executing its purpoſes, with that of fencing the vicar's lands. Such ſuppoſed violations of right, with the prohibition of ancient roads that are not altered by

the

the commiſſioners, are deemed inadmiſſible, and are not to be diſpenſed with, if within the compaſs of redreſs. But as incompatible with the true ſenſe of things theſe may appear, yet the award will diſplay others equally ſtrange, as in the exchange between the lord of the manor and lord Melbourne, of the whole of Naylor's farm, but where Naylor's farm is, or who he may be, or where his farm is ſituate, would be too perplexing to diſcover; but if ſuch inapt words and deeds are capable of transferring property, it requires but a ſlender capacity to make a conveyancer. There are alſo ſome lands that are claimed in right of freehold eſtates, that the commiſſioners by their award declare to be copyhold!!

As the act of parliament was not intended to do miſchief by the halves, ſo every advantage has been taken by the managers thereof, to complete all that inventive aptitude could ſuggeſt, under its pretended authority. Prior to this incloſure, there were ſeveral plots of land in the pariſh that had been deviſed to the pariſh for the uſe of the church; as the three roods of land in the little meadows, for the purpoſe of ſtrawing the church; a plot of

land by the Woodlane Way for the purpoſe of providing or ſupplying the ringers with bell-ropes; alſo a plot of land in the Hay-meadow called the Bull-hook; alſo a plot of land in the Long-doles; alſo a plot of land in the Holford; alſo a plot of land in the Stankard furlong, called the Ball-piece; alſo a plot of land called the Church balk, gave ſolely for a road to the church; alſo a plot of land near Newton moor; alſo a plot of land (though impartible) in Newton marſh. But that one part of the buſineſs might reciprocate with the other, that was conducted under the authority of this act of Parliament, we now diſcover that theſe lands belonging to the church, are ſold; and we are alſo told that the vender of theſe lands was a hireling conſtable of the pariſh, and that the vendee was one of the commiſſioners!!! Under what ſtrange pretended colour of right theſe things are done, we ſhall not ſay, but conſider it as an offence againſt the law in both vender and vendee; and the vender was not ever in poſſeſſion of theſe lands, or could pretend to any abſolute right or title thereto, and this the commiſſioners muſt certainly know; it doth

not ſeem to us that the commiſſioners had any thing to do with the old incloſed land belonging to the church, excepting in the tithes of thoſe lands and the right of common that might belong thereto; but how they could take upon them to ſet forth in their award, that they have alloted in exchange thoſe lands to new proprietors, without the conſent of thoſe in whom they were reſted, is yet more ſtrange. It likewiſe appears that theſe lands are ſold for a leſs quantity than they in reality contain; as the three roods in the little meadows are mentioned in the award as thirty-ſix perches only, ſo that there is a decreaſe of two roods and four perches out of three roods; but as the ſale of theſe lands muſt undergo a very different inveſtigation, we ſhall proceed to ſomething elſe, and only add that the wretch that had that turpitude and malignity of heart, that impudence and audacity to violate right in ſo open a manner, as by the ſale of theſe lands, that would plunder the ſacred rights of the church, that would contemn the deſign of the donor, and defraud the donee; that would cheat

and ſubvert his purpoſe, becauſe the dead could not reſume their bodies and ſpeak for themſelves, and the living might wink at his baſeneſs, though neither living or dead eſcaped his rapacity!! but whether ſuch a one ought to be deemed a worthy member of ſociety, let others determine.

As incloſing lands in different lordſhips has been ſo much in practice for years paſt, it is much to be lamented that it has not been clearly aſcertained and publickly known, what length of time, with enjoyment, is ſufficient to conſtitute a right of common, or to antiquate a right where enjoyment was neglected, without leaving it to commiſſioners, (of which they know ſo little) there is not any doubt but that the law has determined theſe things, but if the knowledge of them is locked up in the breaſt of ſo few, it will avail but little. In the admiſſion or rejection of claims for a right of common in right of property, within the manor or the lordſhip of Melbourne, the commiſſioners could not or would not lay down any general rule, or adopt any ſyſtem that they could purſue without variation;

riation; for if they had rejected all claims where there was not a proof of right existing, this would have been proceeding judiciously, and if they had admitted all claims that could be proved to have enjoyed a right within the memory of living witneſs, the commoners muſt have been participants of the meadow land. And if they had allowed all claims where a right had been enjoyed at the diſtance of twenty or thirty years, and at intervals ever ſince, in ſuch caſe ſome of the claims made in right of ſome of the new houſes, muſt have been admitted alſo.

We ſhall not pretend to ſay but that the commiſſioners were men of property, of credit, and of character, and their character we do not wiſh or mean anywiſe to debaſe or impeach; or to infer that the mode they purſued was not the common track or practice that was and is adopted in other incloſures; but if the practice is baſe and illegal, and unwarrantable in law, it is full time that a more legal one was adopted, and ſubſtituted in its room.

Early ages thought it neceſſary to ſet out and appoint for each townſhip, three corn fields, as a proper means to provide ſuch townſhip with that requiſite and uſeful ſupport of life, that we call by the name of bread; but the preſent age has been as ſtudious and attentive to deſtroy thoſe means of human ſupport; but whether the paſt or preſent ages have proceeded on principles moſt beneficial to mankind in that reſpect, time will certainly be the beſt evidence.

However ill-fated this act of parliament might be, or its liberal meaning ſubverted and ſtrained beyond its power, or however peremptory the commiſſioners might be in executing its purpoſe, or attached to the intereſt of thoſe that made choice of them, or however incomplete, inexplicable, imperfect and imbecile, their great voluminous award that was the finiſhing ſtroke of their buſineſs may be, yet the evil doth not there ceaſe; but opens a way to every device that oppreſſive invention can ſuggeſt, and this will appear by an unexpected order from the juſtices of the county, that if kept inviolate and unalterable, muſt ſo baffle and confound

all

all the ratiocination we are capable of, and the ſmall pittance of the knowledge of rights we have acquired either from nature or experience, that the mind ſtands appalled at the effort. This order is as follows.

Derbyſhire to wit. " We Richard Bateman and John " Leaper Newton, Eſqrs. two of " his Majeſty's juſtices of the peace in and " for the ſaid county, at a ſpecial ſeſſions " held at Melbourne, in the hundred of " Repton and Greſley, in the ſaid county, " the eleventh day of July, one thouſand " ſeven hundred and ninety ſix, having up- " on view found that a certain part of a " footway leading from the town of Mel- " bourne, in the pariſh of Melbourne, in " the ſaid hundred, to and unto the pariſh " of Breedon, in the county of Leiceſter, " lying between the weſtwardly end of a " certain lane in Melbourne aforeſaid, called " Blackwell-lane, to the ſouthwardly corner " of a piece of land in Melbourne aforeſaid " called Brooks-barley, as the ſame leads " from the ſaid weſtwardly end of Black- " well lane by the front of Melbourne Hall

" to the bridge lying on the ſouthwardly
" ſide of the miller's houſe, and from thence
" through certain pieces of land in Mel-
" bourne aforeſaid, the property of the
" right honourable Peniſton lord viſcount
" Melbourne, of the kingdom of Ireland,
" called the Town-end-cloſe, Middle-field,
" Boſton-gate, Lodge-hill, and thence to
" the ſouthwardly corner of Brooks Barley
" aforeſaid, which ſaid road is of the length
" of one thouſand ſeven hundred and
" nine yards or thereabouts, and particu-
" larly deſcribed in the plan hereunto an-
" nexed, may be diverted and turned, ſo as
" to make it nearer to the public. And we
" at the ſame ſeſſions having upon view
" found that a certain part of a certain
" other footway leading from the town of
" Melbourne in the ſaid pariſh of Mel-
" bourne and hundred aforeſaid, to the
" pariſh of Breedon aforeſaid, lying between
" Blackwell-lane aforeſaid, and the ſouth-
" wardly corner of Brooks Barley aforeſaid,
" and leading over or through certain other
" pieces of land in Melbourne aforeſaid,
" alſo the property of the ſaid lord viſcount
" Melbourne,

" Melbourne, called Orton's close, Horſe
" Park, Clover field, Brooks-wheat; and
" thence to the ſouthwardly corner of
" Brooks-barley aforeſaid, which ſaid road
" laſt mentioned is of the length of one
" thouſand eight hundred and fifty ſix
" yards or thereabouts, and particularly
" deſcribed in the plan hereunto annex-
" ed, may be alſo diverted and turned
" ſo as to make the ſame nearer to the pub-
" lic. And we the ſaid juſtices, at the ſaid
" ſeſſions, having viewed a certain courſe
" propoſed for the new footway, in lieu of
" the two laſt-mentioned footways, from the
" bridge end of Blackwell lane aforeſaid,
" to the ſaid ſouthwardly corner of Brooks-
" barley aforeſaid, and which ſaid propoſed
" courſe leads along the ſaid Blackwell-
" lane over a bridge acroſs the ſaid lane,
" called Blackwell-lane bridge; and from
" thence through the lands and grounds of
" the ſaid lord viſcount Melbourne, in
" Melbourne aforeſaid, called Orton's cloſe,
" North-field, Middle-field, Lodge-hill,
" Brooks-barley, and thence to the ſouth-
" wardly corner of Brooks-barley, which

" ſaid new propoſed road is of the length of
" one thouſand ſix hundred and fifty-three
" yards, or thereabouts, and particularly
" deſcribed in the plan hereunto annexed;
" and having received evidence of the con-
" ſent of the ſaid lord viſcount Melbourne
" to the ſaid new footway being made
" through and over his lands and grounds
" herein before deſcribed, by writing under
" his hand and ſeal, we the ſaid juſtices do
" therefore order that the ſaid two firſt men-
" tioned footways be diverted, turned and
" ſtopped up, and that the ſaid new pro-
" poſed courſe over the lands and grounds
" of the ſaid lord viſcount Melbourne, aſ-
" cribed in the ſaid plan, and containing in
" length one thouſand and ſix hundred and
" thirty five yards as aforeſaid, be the
" footway leading from the Blackwell-lane
" bridge, to the ſouthwardly corner of
" Brooks-barley aforeſaid. Given under
" our hands and ſeals the eleventh day of
" July, one thouſand ſeven hundred and
" ninety ſix."

RICHARD BATEMAN,
J. L. NEWTON.

To

To inveſtigate this order of ſeſſion with that ſylogiſtical and ſcholaſtic refinement, with which it is penned, is a taſk we ſhould not attempt to encounter; but as we have been condemned unheard, and without notice, otherwiſe than by the order itſelf, we ſhall venture to expatiate a little on this unforeſeen procedure, and endeavour to repel its force and deſtroy the fabric by undermining its ſandy foundation with ſuch ſelf-evident truths and knowledge of things as are requiſite thereto. And to do this, we ſhall begin with the road the juſtices firſt mention, and order to be ſtopped up. This road commenceth in the principal part of the town of Melbourne, and continueth forward along the town ſtreet by the northwardly end of the pariſh church and vicarage houſe, and by the ſouthwardly ſide of Melbourne Hall and garden, unto the land called the Town-end-field, and from thence eaſtwardly over the Town-end-field, to the poſtern or gateway into the land called Melbourne park, (though now diſparked), and over Melbourne park to the extremity of the park and manor of Melbourne. As to this

road leading by the front of Melbourne hall, we ſhall openly deny, (except they mean a back or ſide front), and as to it leading over the Town-end-cloſe, is equally inconſiſtent, (except ſome plot of land has been recently baptized by that name) neither do we know any thing of Middle-field, Boſton-gate or Brooks-barley, nor is there any ſuch lands generally known by ſuch appellation; however this road the juſtices ſay, may be diverted, and turned ſo as to make the SAME nearer, but how this road can be either turned, diverted or ſtopped up, and yet be the ſame, is ſuch a ſoleciſm as we here meet with. But regardleſs of this wild deſcription, this has been the way, for that length of time the memory of man runneth not to the contrary, and is more direct and commodious than any other that might be ſubſtituted in its ſtead; yet the juſtices have ordered this road to be ſtopped up; but if they have determined theſe things from their own inſpection, do they not know that this is the road to the church, to the vicar's houſe, and other houſes, and alſo to Melbourne Hall, as well as to the corn

 mill

mill that is on this road, where the principal part of the proprietors of land in Melbourne have covenanted with the lord of the manor, under the hand and ſeal of each party, to grind their corn? or do the juſtices mean to unfetter the proprietors from this obligation? or do they know that the highway leading by the mill, called the Woodlane Way, is not ſtopped up by the commiſſioners? or do they know that this is the only way to the land belonging to the pariſh, called the Bell-rope cloſe? or do they know that there are various foot-ways that branch out of this road at or near the Town-end-bridge? or is it known by them that lord Melbourne kept the road in repair that leads from the north end of the vicarage houſe to the Town end-field? or do they know that the reparation of this road is not from a generous and ſpontaneous diſpoſing mind in Lord Melbourne, but from a ſtipulated contract that has been made between his anceſtors and the inhabitants of Melbourne, and that he enjoys a compenſation for keeping this road in repair? and is this the grateful return, is this

the bonity, the gratitude, the effuſion of birth, education, opulence and an elevated ſituation in life? is this the conſcientious mode adopted to repay their conceſſion for ſubmitting and yielding to have their houſes pulled down and removed, their lands and roads immured within his garden to ſatiate his deſire, and is this the requital and remuneration? but allowing all this to be the deſign, doth lord Melbourne intend to keep all that has been given for the reparation of this road, and now tell us that it ſhall be no longer uſed, that the reparation may ceaſe?

The juſtices mention a plan as being annexed to the order, but this plan we have not ſeen, but know that if the road be judiciouſly delineated therein, it will appear extremely indirect, as the perſon that took a ſketch of this road, was compelled to take it in ſuch indirect form, and in ſeveral places where there was not any track, purpoſely to make it appear the longer; but if the road was taken in a direct line from the Lodge-hill to the Town-end-bridge, and from thence to Melbourne it would be much

much ſhorter than any other that can poſſibly be pointed out; but it rather ſeems as if the juſtices had not exactly aſcertained the length of thoſe roads, as they themſelves vary in repeating the length!

The next road we take notice of commenceth exactly at the ſame place or point as the firſt-mentioned road; this road proceeds along the lane called Saxelby-lane, otherwiſe Blackwell-lane, on the north ſide Melbourne Hall and garden wall, and from thence inclines eaſtwardly over the land called Orton's cloſe and Melbourne park, to the extremity of the park, and manor, where it uniteth with the Breedon road, over the Breedon lands. This road to Breedon, if it muſt be called one, has been ſet out ſince the incloſure by lord Melbourne's ſervants, is but little known and as little uſed, but the juſtices ſay this may be turned and diverted ſo as to make the SAME nearer to the public, but have (as may be ſeen by their order) ordered that this road be alſo diverted, turned and ſtopped up, and therefore is not very likely to be the ſame. Such parts of this road that are ſituate between

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the weſtwardly end of the Saxelby, alias Blackwell-lane, and the eaſtwardly end at the Brook, are kept in repair at the private expence of lord Melbourne, in conſideration of having immured within his garden wall an ancient highway, that was ſituate between Saxelby lane and the Mill pool, and between Blackwell's old hall, and Sir John Coke's old orchard and garden; nevertheleſs if we regard the literal ſenſe of the order of the ſeſſion, and that be ſufficiently authoritative, it is unqueſtionable but that this road is ſtopped up! and as this is the caſe, we could wiſh to know which is the way to Melbourne Hall, that may be now uſed? and it is alſo as neceſſary to know, if poſſible, the way that may be uſed to the towns of Breedon or Wilſon, as there is not any other whatever that leads from theſe towns to Melbourne, for either horſe or foot, but by one of theſe two, that the juſtices ſo order to be ſtopped up! As a conſiderable length of each of theſe two roads extend over the lands belonging to the proprietors at large, may they not any longer exerciſe and enjoy a right on their own land?

land? and have the juſtices releaſed lord Melbourne from the obligation of keeping ſuch parts of theſe roads in repair, as his anceſtors had covenanted to repair? The juſtices ſay they have ſet out a new road (in lieu of the two they have ordered to be diſcontinued) from the bridge end of Blackwell-lane over a bridge acroſs the ſaid lane called Blackwell-lane bridge, and from thence over certain lands they there mention, where it unites with the Breedon footway that leads over the Breedon lands; but where this bridge can poſſibly be, that is ſaid to be acroſs this lane, we have not yet diſcovered! but leaving all theſe ſoleciſms as we find them, do the juſtices know or have they ſhewn the way from the town of Melbourne to the road they have ſet out and ordered to be uſed? or do they know that the commiſſioners appointed by act of parliament to allot and ſet out the lands that were then to be incloſed, did alſo ſet out and appoint a footway leading from the ſouthwardly ſide of Orton's cloſe, over the land called the Town-end-field, to the poſtern or gateway in the park fence? and do

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the juſtices know that immediately after the road was ſet out, boards were put up that contained threats of proſecution againſt any that ſhould dare to uſe that road, and that boards of a like tendency were put up to deter any from uſing the old way by the mill, and that the pavement in the Town-end-field was dug up and carried away, that the road might be rendered impaſſable, and to create an additional terror, a plantation was made at the entrance of the Town-end-field, to ſhew that the land was ſacred to lord Melbourne only, and that the footſtep of a peaſant muſt not be ſeen there, and the ſtile on the Lodge-hill taken away, and the ſpace where it ſtood fenced with thorns, the footway over that part of the park that is in the tenure of Brooks dug up to make that road alſo impaſſable?

And are we yet to be the ſport of winds, and inſulting oppreſſion? However ſuch as the before enumerated, are the grounds and leading features of our complaints. Yet if it can be ſhewn by more cogent argument and truths, that theſe our ſeeming complaints ariſe only from a defect of forenſic knowledge,

knowledge, and a true ſenſe of the right of things, and that ignorance is the ſource of our miſtake and errors, and that the commiſſioners proceeded judiciouſly, and according to the purport of the act, in ſetting out roads, however indirect and incommodious they may be, and that ſuch roads only are to be uſed as the two noble lords or their curator ſhall think fit, whether correſpondent with thoſe deſcribed in the award or not, and that ſuch road only as the commiſſioners thought proper were to be put in repair, or fenced, and that the roads might be contracted to any width or the land appropriated to private uſe, and that there ought not to be any road over the Quaker's land, though ſituate in a direct line, where the road ſhould paſs, and that the Quakers were not rateable to the rate impoſed on other proprietors for the making of the roads, and that it is lawful to erect gates on the roads, to prevent the ſurveyor from making a proper advantage of the herbage of the lanes, for the uſe of the roads, and that it is lawful to make a plantation by the road ſides as fancy dictates, and that the act of parliament

is void where it requires that eſſential ingredient that if the commiſſioners ſtop up or alter any ancient road it muſt be ſet ſo forth in their award, and that it was lawful to ſtop up a road to the front door of a manſion with or without this eſſential requiſite, and that it was lawful to ſtop up the two roads called the Gallowſpiece lanes, becauſe the commiſſioners did allot unto the lord of the manor one of thoſe lanes, a plot of his own demeſne, and ancient incloſure not anywiſe implicated with other lands; and though one thouſand one hundred and forty-three pounds ſixteen ſhillings and nine-pence hath been raiſed for the uſe of the roads, not any perſon offers to account for ſuch ſum, and that it was lawful for the ſurveyor of the roads (as ſoon as the allotment for ſtone was ſet out) to get up the ſtone, and ſell it wherever he could find a purchaſer; and that the ſection in the act of parliament that ſecures to the lord of the manor the whole of the two plots of land in Ramſley field, called the Lord's Ground, doth alſo contain ſuch apt and expreſſive words and terms as doth legally implicate and include the land

called

called the Care flats therewith, and doth prevent the commoners from having any part of that land, and the land itſelf from being rateable to the roads and expence of the act, and fencing the vicar's lands. And that the ſection in the act of parliament that ſecures the lord of the manor's right of fiſhery, doth legally and ſufficiently imply, that five acres, three roods, and twenty-four perches of land (a part of the common) is alſo ſecured under the appellation of Furnace pool, though this pool was only nominal; and that twenty-ſeven acres, two roods, and twelve perches (a part of the common) was alſo ſecured to the lord under the appellation of Melbourne pool, and that the commiſſioners right in thoſe lands was deſtroyed thereby; and the lands implied to be covered with water, acquit of every expence, to which other commonable lands were rateable; and that by the allotting of a pool, or lake of water, the land that is implied to be covered with water doth alſo paſs therewith, whether ſuch ſuppoſed pool or lake of water has any real eſſence or not, and that the commiſſioners proceeded on eligible principles in carving

out

out the land (to be allotted) amongſt the proprietors in having the land called the Care flats, and thoſe implied to be covered with water unnoticed, and in rejecting the commoners claim to the meadow land, becauſe that right had been neglected for about ſixty-five years, and in their admitting claims although not any right had ever been enjoyed at all, and their rejecting claims for the new houſes, although an uninterrupted right had been exerciſed and enjoyed for the ſpace of thirty years, and their pretence of ſetting out roads where there is not any to be found; and in their deſcription of ſome of the allotments they have made, and their declaring lands to be copyhold that were claimed in right of freehold, and their pretending to have transferred the lands of a farm under a fictitious name; and their not accounting for the money they have received, and their effort to aliene the lands deviſed to the pariſh for the uſe of the church; and that one part of the proprietors had a right to withhold the award from the others inſpection; and that although lord Melbourne's anceſtors had covenanted

venanted to keep the road in repair that is ſituate between the vicar's garden wall, and the Town-end-field, on condition of a houſe being pulled down, and the land on which it ſtood with the garden that was annexed thereto laid waſte, that was ſituate between the vicar's garden wall and mill by the Mill pool ſide, and alſo one other houſe incloſed within Sir John Coke's garden, that was ſituate between Sir Francis Needham's garden and Bewley lane; and that lord Melbourne may legally recede from ſuch compact, and alſo keep poſſeſſion and hold all that he enjoys as a compenſation for the performance of that compact; and that under the authority of an order of the ſeſſions we are ſhut out and for ever barred from the right to this road, and alſo the road that leads thereto (from the end of Blackwell lane) though this is a part of town ſtreet, and every proprietor has an intereſt therein; and that under the ſame authority, he may legally ſhut up the Saxelby alias Blackwell-lane road, and alſo keep and hold all that he enjoys for keeping that road in repair, though he thereby excludes himſelf every

way

way from his own door, and alſo cuts off all communication between the towns of Melbourne, Wilſon, and Breedon, &c. and that though this order of the ſeſſions (as well as other things we have endeavoured to develope) is ſo incorrect in its principles, and has that imbecility and incertitude in the locality, as well as in the length of the roads that are there deſcribed, and is ſo inadequate to the purpoſe, ſo inexplicable in the deſign, ſo irreconcileable to reaſon, ſo adverſe to that verity it ought to contain, the inductions ſo repugnant, and the whole ſo deſtitute of that ſolemnity that ſhould accompany an abſolute law, that is intended as a rule of action; and that notwithſtanding all this there muſt be an entire dereliction and amneſty of all the roads they ſhall pleaſe to inhibit; and that we muſt with taciturnity languiſh in paſſive diſquietude under the burthen the oppreſſor ſhall pleaſe to inflict, though almoſt indefinite; and that though theſe wanton and cauſeleſs inſults are inſupportable, and makes us indignant, and appals the mind of the injured, with irreconcileable diſguſt and abhorrence;

yet

yet that we muſt ſuppoſe the law of our country ſo terrific and congenial, that it will only aid the deſigns of the great, and that all appeals thereto are unavailing, ſince the fiat is given. But (as has before been ſaid) if what has been before enumerated can be refuted by thoſe that have a greater profundity of perception, more refined diſcernment, more juridical knowledge, than we dare pretend to; if they can repel, and invalidate, by more cogent and argumentative evincing truths that our ideas of things are imaginary only, and that our conception of things are fallacious, we ſhall then gladly change our opinion; but until that is done, undauntedly deſpiſe the parent of theſe fruitleſs efforts, and truſt that the law is not ſo wild, ſo cruel, ſo unjuſt and deleterious as either to reſtrain our complaints, or refuſe redreſs.

By endeavouring to inveſtigate and expoſe the rights and wrongs of the things to which the ſubject matter we have had before us relates, it may poſſibly happen that ſome diſguſt may be taken, and that deriſion, contempt, and the ſevereſt ſarcaſm

will be beſtowed upon us for ſo doing, and that vindictive ſpite and malevolent virulence will be the reſult; but this will not be from the good, the virtuous, and juſt, for if they can ſhew that there is not ſufficient cauſe of complaint the effect will then certainly ceaſe; but if that is impoſſible to be done, it is not known for why we muſt be, and continue to be, the wanton ſport to ſatiate the inſatiate pride and ambition of a relentleſs vaſſal of a lord.

THE END.

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MVSEVM BRITANNICVM